

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN**

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**HIGHWAY J CITIZENS GROUP, U.A.  
and WAUKESHA COUNTY  
ENVIRONMENTAL ACTION LEAGUE  
Plaintiffs,**

**v.**

**Case No. 05-C-0212**

**UNITED STATES DEPARTMENT OF  
TRANSPORTATION; Secretary of  
Transportation RAY LaHOOD;  
FEDERAL HIGHWAY ADMINISTRATION;  
Administrator of Federal Highway  
Administration; U.S. ARMY  
CORPS OF ENGINEERS; District Engineer  
COLONEL JON L. CHRISTENSEN; and FRANK  
BUSALACCHI, in his official capacity as  
Secretary of the State of Wisconsin  
Department of Transportation  
Defendants.**

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**DECISION AND ORDER**

On May 8, 2009, defendants filed their reply brief in support of their motion for summary judgment. In their brief, defendants brought to the court's attention the Supreme Court's recent decision in Summers v. Earth Island Institute, \_\_ U.S. \_\_, 129 S. Ct. 1142 (2009), which involves organizational standing. In its decision, the Court reiterated that "the court has an independent obligation to assure that standing exists, regardless of whether it is challenged by any of the parties." Id. at 1152. The Court then indicated that a court cannot discharge this independent obligation unless the plaintiff submits "individual affidavits" from its members which show that the members themselves have standing. Id. This is so, held the Court, even if the plaintiff's complaint includes allegations establishing

the standing of the organization's members and those allegations have been admitted by the defendant. Id.

So that this court can discharge its obligations under Summers, plaintiffs are hereby directed to submit an affidavit from at least one member of each organization which establishes that those members have standing. The affidavits must be filed on or before **June 5, 2009**. Plaintiffs may include along with the affidavits a short legal memorandum explaining the basis for their standing. If defendants so choose, they may file a response to the plaintiffs' submissions on or before **June 12, 2009**.

**SO ORDERED** at Milwaukee, Wisconsin this 27 day of May, 2009.

/s \_\_\_\_\_  
LYNN ADELMAN  
District Judge